

# CHAPTER IV

---

## Issues Concerning NC Public Schools

*Douglas Taggart*

*North Carolina Department of Public Instruction  
Raleigh, NC*

*Kirk G. Warner*

*Smith Anderson Blount Dorsett Mitchell & Jernigan LLP  
Raleigh, NC*

**NORTH CAROLINA**

---

**BAR ASSOCIATION**

seeking liberty + justice

North Carolina Bar Association (NCBA) publications are intended to provide current and accurate information and are designed to assist in maintaining professional competence. Nonetheless, all original sources of authority presented in NCBA publications should be independently researched in dealing with any client's or your own specific legal matters.

Information provided in North Carolina Bar Association publications is for educational purposes only; nothing in this publication constitutes the provision of legal advice or services, or tax advice or services, and no attorney-client relationship is formed. Publications are distributed with the understanding that neither the North Carolina Bar Association nor any of its authors or employees render any legal, accounting or other professional services.

Copyright © 2018 North Carolina Bar Association.

ALL RIGHTS RESERVED. Permission is hereby granted for the limited copying of pages or portions of pages of this book by or under the direction of licensed attorneys for use in the practice of law. No other use is permitted without the express written consent of the North Carolina Bar Association.

**CHAPTER IV**  
**Issues Concerning NC Public Schools**

*Douglas Taggart – Raleigh*  
*Kirk G. Warner – Raleigh*

Introduction.....	IV-1
Interstate Compact on Educational Opportunity for Military Children.....	IV-1
Records and Enrollment.....	IV-2
Graduation .....	IV-2
Waiver Requirements.....	IV-2
Transfers During Senior Year .....	IV-2
Placement and Attendance.....	IV-3
Eligibility and Enrollment .....	IV-3
Extracurricular Participation .....	IV-4
The Important Role of Lawyers .....	IV-4
Resources.....	IV-5

This page is intentionally blank.

## CHAPTER IV **Issues Concerning NC Public Schools**

### Introduction

K-12 Military children and parents face an array of difficult issues moving from base to base and post to post across the globe. The continuous deployments during the long war since 9/11 have an incredible impact on their families and their children. A good education and a chance at normalcy/opportunity for K-12 students is one of the very highest priorities for our military families. The obstacles to achieving that priority are often high. There are over 65,000 K-12 children from Active and Reserve Military families in North Carolina alone. In addition there are over 250,000 K-12 students from veterans' families in North Carolina. They are in almost every school and classroom. Legal Assistance and civilian attorneys often have clients with K-12 education issues. This presentation discusses key issues arising in our military families relating to public education, including the interstate compact, custodial POAs, residence and enrollment issues, dispute resolution, and other K-12 issues arising in representation of military parents and students. Understanding the system is essential.

### Interstate Compact on Educational Opportunity for Military Children

The overriding national program for K-12 military children is the Interstate Compact on Educational Opportunity for Military Children (also known as MIC3). MIC3 evolved from several earlier efforts at lowering the hurdles confronted by transitioning and stationed military K-12 students and their families. The 1998 - Military Child Education Coalition forms, the 1999 - Army / MCEC Secondary Education Transition Study, and Memorandum of Agreement for school systems, Department of Education's and military installations, and the 2009 – EMC21 (SETSII) are the early shapers of MIC3.

North Carolina joined as the eleventh state in the nationwide MIC3 compact initiative in 2009. Twenty-Seven other states have active legislation to comply with the MIC3 provisions. Member states work together to ease transition issues in public education for military children moving between member states as a result of a military move. Today, all fifty States are signatories. The enabling statute can be found at:

[https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter\\_115c/gs\\_115c-407.5.html](https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_115c/gs_115c-407.5.html)

MIC3 has four substantive chapters of particular interest to lawyers assisting military families. Chapter 300 deals with the Transfer of Education Records and Enrollment; Chapter 400 addresses Graduation; Chapter 500 covers Placement & Attendance; and Chapter 600 tackles Eligibility. Key provisions of each chapter are discussed below.

## *Records and Enrollment*

For transitioning military families, official school records are sometimes difficult to obtain<sup>1</sup>. The MIC3 provides that unofficial records be provided to family to allow them to enroll in the receiving state and provides that the receiving state recognize those records. The receiving school must enroll and place student in their systems. The Sending state has 10 business days to provide official education records to receiving state's enrolled school/system after Receiving state request. Similarly, immunization records must be conveyed and the series started in 30 days. It also allows enrollment for kindergarten if of legal age in the Sending state.

North Carolina has also just passed an early enrollment to further facilitate transitioning military dependents and creating opportunities to early enroll and engage in extracurricular and special programs available to those already in the school system. Starting January 1, 2019, military members can commence remote enrollment of their children at the time they receive Permanent Change of Station (PCS) orders rather than waiting until they physically report for duty.

## *Graduation*

The MIC3 Compact Rules on Graduation greatly facilitate a fairer treatment of the military children's overall course of study. Waiver and transfer create significant hurdles for many. The MIC3 attempts to address those problems.

Waiver requirements – The Compact provides that LEA administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another LEA or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the LEA shall provide an alternative means of acquiring required coursework so that graduation may occur on time. If the receiving LEA requires a graduation project, volunteer community service hours, or other state or LEA specific requirements, the receiving LEA may waive those requirements.

Transfers during senior year – There may be cases in which a military student transferring at the beginning or during his or her senior year is ineligible to graduate from the receiving LEA after all alternatives have been considered. In such cases the sending and receiving LEA's shall ensure the receipt of a diploma from the sending Local Education Agency (LEA), if the student meets the graduation requirements of the sending LEA. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with the spirit of the compact. The compact encourages the Receiving and Sending states to work together to figure out which state has best path to meet graduation requirements for issue of diploma. Most scenarios are resolved in the Receiving state, but not always.

<sup>1</sup> <http://www.ncpublicschools.org/docs/questions/student-records.pdf>

In addition, the Compact encourages states to ensure that schools have the flexibility to offer course waivers for similar course work. Any course equivalent credit denial requires justification. The waiver of graduation project requirements is allowed, most typically for transfer during the student's senior year. Exit exams are a potential issue that must be addressed. MIC3 provides that exit exams from a Sending state should be accepted. Finally, there often needs to be significant interaction with the Sending state to issue diploma if NC graduation requirements are met with senior year course work in another state.

### *Placement and Attendance*

What credit should be given to transfer students of military families? Where should they be placed in the school system? Course placement requirements in MIC3 match placed courses as closely as possible, subsequent evaluations may override allowances. For education program placements, the Receiving state can use out-of-state assessments/evaluations for initial placement. The Receiving states also must provide comparable services for Exceptional Children (EC) students based on an IEP. The MIC3 reaffirms Section 504 of Rehabilitation Act for reasonable accommodations and modification to address needs of students with disabilities.

### *Eligibility and Enrollment*

Chapter 600 of the MIC3 governs eligibility and enrollment. The MIC3 rules provide that a custody order, special power of attorney, or other applicable document relative to the guardianship of a child of a military family and executed under the applicable law of each member state shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent. A special power of attorney form, which is acceptable in some jurisdictions, can be obtained through the JAG offices pursuant to Military Family Care Plan regulations. These documents should be in every haversack of those lawyers representing military families who have K-12 children in the household.

In addition, a local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent. Tuition may be charged for optional programs offered by the LEA. Also, a transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent. Finally, the local education agency shall not charge tuition. In addition, transportation to and from school is the responsibility of the non-custodial parent or other persons standing in loco parentis.

Other issues related to enrollment include the problems of late enrollment due to last minute or mid-calendar year moves. The new North Carolina remote, early enrollment legislation will mitigate some issues but certainly not all.

### *Extracurricular Participation*

One of the thorniest problems for transitioning military children is access to many extracurricular activities (cheerleading, sports, honor societies, etc.). This is a difficult issue for local school systems to balance. The MIC3 requires school systems to facilitate opportunity for transitioning military children to be included in extracurricular activities, regardless of application deadlines to the extent they are otherwise qualified. There are many methods of balancing the availability to transitioning students without adversely impacting the opportunities for current students in the school systems.

In addition to the problems of fair access to extra-curricular activities, many factors are problematic for transitioning military children. These scenarios are endless but many issues arise depending on when the student transfers. Also, early testing for PCS military students, on-time graduation and enrollment issues are ongoing challenge especially for school systems further from active duty installations. In North Carolina, Military Liaison Counselors and School Liaison Officers serve a vital role in the high density military community school systems. They receive, counsel and advocate for military K-12 students.

### The Important Role of Lawyers

Military and civilian lawyers also must be ready to assist in many situations to help advocate for fair treatment of transitioning military dependents. In addition to preparing necessary Educational or Non-custodial POAs, lawyers and Legal Assistance JAGs, need to understand the system and how to meaningfully counsel military clients and school systems with a high density of military students. In addition, the NC Department of Public Instruction has several dispute resolution process already in place for disabled students.<sup>2</sup> These administrative remedies must first be exhausted before pursuing any litigation in these areas.

With deployments, single parents or dual-serving military spouses create significant challenges. Non-custodial caregivers must be recognized. There are several options that make sense. Powers of attorneys are part of the kit bag for lawyers in the arena. In addition, caregiver adult affidavits and Parent, Guardian or Legal Custodian affidavits are commonly used. Sample forms of model affidavits and a summary of the policies that should be implemented are found at <https://www.ncsba.org/policy/sample-policies/>. Note that not all LEAs recognize these policies or model affidavits. Special POAs often need to be prepared. Problems arising in this arena are often tackled by School Boards and Superintendents. One recourse is that the Local Board could overrule Superintendents etc. for many enrollment issue for military dependents.

Lawyers also must be aware that our military installations have resources for school age military dependents. As mentioned, School Liaison Officers and Military Liaison Counselors are sometimes available to assist dependents in tackling many school-related issues. Exceptional Family Member Program (EFMP) counselors and programs also must be understood. North Carolina has Exceptional Children (Children with Disabilities) policies in place. EC Dispute Resolution is also available through NC DPI. (919 807 3969)

<sup>2</sup> <https://ec.ncpublicschools.gov/parent-resources/dispute-resolution>



Finally, lawyers need to understand family law issues of custody, especially during deployments, and behavior issues for the children during and after combat deployments. The behavior issues for students with deployed parents are myriad. Some solutions are on the way. Adolescent behavioral health inpatient treatment is a logistics nightmare for military parents. A new children's psychiatry wing at Betsy Johnson Hospital, close to Fort Bragg is being funded by grants from the State Legislature to help in this important arena.

### *Resources*

-Compact Rules Booklet

<http://www.mic3.net/assets/rules-2018-re-print-rev-19-jul-2018.pdf>

-Clearinghouse for Military Family Readiness – Penn State

-School Resources for Military Connected Children

<https://schoolresources.militaryfamilies.psu.edu/>

This page is intentionally blank.